

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YVONNE M. ABHYANKAR and KARSHI
BEHRSTOCK,

Plaintiffs,

18-cv-9411 (PKC)

-against-

ORDER

JPMORGAN CHASE & CO. and JPMORGAN
CHASE BANK, N.A.,

Defendants.

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CASTEL, U.S.D.J.

Defendants will be permitted to conduct two-hour examinations of Dr. Greisman and Dr. Festa on plaintiff Yvonne M. Abhyankar's competence to testify. Until then, Ms. Abhyankar need not be produced for deposition.

The consequences of any unavailability of Ms. Abhyankar will be guided by the Federal Rules of Evidence and a body of case law governing unavailability due to death or incompetence. If plaintiff is unavailable during the discovery period, then she may not submit an affidavit in support or opposition to any motion, application or offer of proof at any later point in time.

On the other hand, under the Federal Rules of Evidence, a party may offer a statement or document from an unavailable witness under certain circumstances. The Court will not catalogue those instances or prejudge their applicability.

The unavailability of Ms. Abhyankar because of the reasons outlined in the letters submitted to the Court may impact the ability of plaintiff's attorney to proceed unless a personal representative is appointed by a court of competent jurisdiction. See, e.g. Rules 1.4 & 1.14, NY

Rules of Professional Conduct; NY Mental Hygiene Law § 81.20; and NY CPLR § 1208. It may also raise an issue of a conflict of interest in representing the two co-plaintiffs. These are matters left in the first instance to plaintiff's counsel.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
September 20, 2019